

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Maya Pyskaty,

*Plaintiff,*

v.

Wide World of Cars, LLC d/b/a Wide World  
BMW and BMW Bank of North America,

*Defendants.*

Civil Action No.: 15-cv-1600(JCM)

**Declaration of Evan S. Rothfarb in Support of Plaintiff's Motion for Summary Judgment**

Evan S. Rothfarb hereby declares, pursuant to 28 U.S.C. § 1746, that the following facts are truthful:

1. I am an attorney duly admitted to practice law in the State of New York and in the United States District Court for the Southern District of New York.
2. I am an attorney at Schlanger Law Group LLP, counsel for Plaintiff in the above referenced matter and, as such, am familiar with the facts and documents relevant to this dispute.
3. I make this Declaration in support of Plaintiff's Motion for Summary Judgment.
4. Defendant Wide World of Cars, LLC d/b/a Wide World BMW ("WWC") is a domestic limited liability company formed under the laws of New York located in Rockland County, New York. (A true, complete and accurate copy of its registration with the New York Secretary of State is attached hereto as "Exhibit A.")
5. Defendant BMW Bank of North America ("BMW Bank") is a domestic limited liability company formed under the laws of Utah. (A true, complete and accurate copy of its registration with the Utah Secretary of State is attached hereto as "Exhibit B.")

6. Maya Pyskaty retained the predecessor firm of the Schlanger Law Group LLP on July 1, 2014.

7. Ms. Pyskaty, acting through counsel, attempted to revoke her acceptance of the Vehicle by written letter dated July 23, 2014. (A true, complete, and accurate copy of the letter is attached hereto as “Exhibit J-16.”)

8. By written correspondence dated August 7, 2014 from Michael Trontz, WWC refused to accept Ms. Pyskaty’s revocation of the Vehicle. (A true, complete, and accurate copy of the letter is attached hereto as “Exhibit J-15.”) Plaintiff’s counsel responded to WWC’s letter on August 21, 2014. (A true, complete, and accurate copy of the letter is attached hereto as “Exhibit I.”)

9. In the course of this litigation, Plaintiff issued third-party subpoenas to several dealerships identified in the vehicle history contained in the CARFAX report dated October 31, 2013 supplied by WWC to Maya Pyskaty. (A true, complete, and accurate copy of the CARFAX report dated October 31, 2013 is attached hereto as “Exhibit J-21.”) (For ease of review, the exhibits used at the depositions of defense witnesses are attached hereto using the same numbering as was utilized at the depositions. They are referred to as sub-exhibits of Exhibit J in the format “Exhibit J-\_\_\_\_” for convenience of review.)

10. Among the subpoenaed dealerships was Wagner BMW of Shrewsbury (“Wagner BMW”), a BMW dealership located in Massachusetts, which is the first dealership associated with the Vehicle in the CARFAX report dated October 31, 2013. (True, complete and accurate copies of the records obtained are attached hereto as “Exhibit C.”)

11. The records supplied by Wagner BMW reveal that Multistate Restoration, Inc. became the lessee of the Vehicle on January 18, 2010, *see* Exhibit C, at 1, and subsequently sought maintenance from Wagner BMW throughout 2010. See Exhibit C, at 2-7.

12. Multistate Restoration, Inc. is a domestic business corporation located in Providence, Rhode Island, that is duly registered with the Office of the Secretary of State for Rhode Island. (A true, complete and accurate copy of its registration with the Rhode Island Secretary of State is attached hereto as “Exhibit D.”)

13. In a supplemental document production by WWC dated April 13, 2017, WWC produced DCS Net Warranty Vehicle Inquiry dated October 10, 2013 (an internal BMW background inquiry), which redacted the customer information section (i.e., prior owner information). (A true, complete and accurate copy of the correspondence accompanying a supplemental document production and the related DCS Net Warranty Vehicle Inquiry are attached hereto as “Exhibit E.”)

14. Despite the redaction, the identity of the first lessee was discovered through third-party records and the Vehicle history information contained in the CARFAX report dated October 31, 2013.

15. During the course of this litigation, Plaintiff’s counsel took the depositions of four defense witnesses: Michael Trontz, Michael Jackson, William Ace and Lawrence Bikles.

16. True, complete, and accurate copies of the relevant pages of the deposition transcripts are attached hereto as follows:

- a. Deposition of Michael Trontz taken April 10, 2018 - Exhibit F
- b. Deposition of Michael Jackson taken April 12, 2018 - Exhibit G
- c. Deposition of William Ace taken March 14, 2018 - Exhibit H

17. In addition, true, complete, and accurate copies of the exhibits used at the depositions that are relevant to Plaintiff's claims are attached hereto as sub-exhibits of "Exhibit J" as follows:

- a. Purchase Documents from Conger's Auto Sales/Rockland Motors - Exhibit J-10;
- b. Certified Pre-Owned by BMW Center Operations Manual dated March 2013 - Exhibit J-11;
  - i. Certified Pre-Owned by BMW Center Operations Manual dated March 2013 (electronic copy for easier readability) – Exhibit J-11(a);
- c. Certified Pre-Owned Process and Procedure dated September 14, 2010 and revised August 14, 2013 – Exhibit J-12;
- d. Retail Installment Contract dated October 31, 2013 – Exhibit J-14;
- e. WWC's Reply to Plaintiff's Pre-Litigation letter dated August 7, 2014 – Exhibit J-15;
- f. Plaintiff's Pre-Litigation Letter to WWC dated July 23, 2014 – Exhibit J-16;
- g. Statement of Certification for a Certified Pre-Owned BMW vehicle dated October 16, 2014 – Exhibit J-19;
- h. Carfax dated October 10, 2013 – Exhibit J-20;
- i. Carfax dated October 31, 2013 – Exhibit J-21;
- j. AutoCheck Report dated June 12, 2018 - Exhibit J-22;
  - i. AutoCheck Report dated June 12, 2018 (electronic copy for easier readability) - Exhibit J-22(a);
- k. Certified Pre-Owned Vehicle Inspection Checklist dated October 10, 2013 – Exhibit J-23;

1. Buyer's Guide and Limited Warranty – Exhibit J-26.

18. Mr. Trontz and Mr. Jackson each appeared as witnesses for WWC pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure.

19. Mr. Jackson also appeared as an expert witness and prepared an expert report. (A true, complete, and accurate copy of Mr. Jackson's report is attached hereto as "Exhibit K.")

20. WWC also retained an automotive paint expert, John J. Saliani, who prepared an expert report. (A true, complete, and accurate copy of Mr. Saliani's report is attached hereto as "Exhibit L.")

21. In the course of Plaintiff's investigation of this matter, Plaintiff retained an automotive expert, Philip J. Grismer, who performed two separate inspections of the Vehicle.

22. Mr. Grismer prepared an original expert report and a supplemental expert report. (True, complete, and accurate copies of Mr. Grismer's reports are attached hereto as "Exhibit M" and "Exhibit N.")

23. Mr. Grismer also appeared for a deposition by videoconference on May 7, 2018.

24. Mr. Grismer's invoices for this matter and his current rate sheet are attached hereto as "Exhibit O."

25. The law firm of the Schlanger Law Group LLP has advanced the payment of Mr. Grismer's expenses.

26. Based upon Plaintiff's counsel review of the relevant case law, consultation with experienced auto litigation attorneys practicing in the United States District Court for the Southern District of New York and throughout the United States, Mr. Grismer's rates of \$200 per hour, \$100 per hour of travel, and \$1,500 per day, are within the range paid to experts with similar experience on similar issues.

Dated: August 3, 2018  
New York, New York

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